IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14528 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDULAL KARSANBHAI - Petitioner(s)

Versus

DEPUTY COLLECTOR JUNAGADH & 3 - Respondent(s)

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Appearance :

MR SURESH M SHAH for Petitioner(s) : 1,
MR. PRACHCHHAK, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
RULE SERVED BY DS for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/12/2005

ORAL JUDGMENT

1.In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, Junagadh dated

19.7.1995/20.7.1995 passed under Section 20(A) of the Bombay Stamp Act directing the petitioner to pay the deficit stamp duty of Rs.25,680/- plus Rs.250/- by way of penalty i.e. in all Rs.25,930/- with regard to the document registration No.732 dated 19.9.1992 presented before the Sub-Registrar, Manavadar. The petitioner has also challenged the notice dated 25.2.2005 issued by the Recovery Officer and Deputy Mamlatdar, Stamp Duty Valuation, Junagadh for the recovery of the aforesaid amount of Rs.25,930/-.

2. The only contention, which is raised by the learned advocate appearing on behalf of the petitioner is that while passing the impugned order dated 20.7.1995 the respondents have not given the benefit of the Government Resolution dated 30.9.1991, which is at annexure A to the petition, to the petitioner. It is the contention on behalf of the petitioner that by virtue of the aforesaid Government Resolution some benefit is given to the small farmers as defined under Section 2(g) of the Gujarat Rural Debtors Relief Act; 1976 and if the agricultural land is sold and the document is executed between those small farmers, the proceedings under Section 32-A of the Act are not

required to be initiated. When the question was asked to the learned advocate appearing on behalf of the petitioner that why the impugned order dated 20.7.1995 has been challenged by the petitioner after a period of 10 years, Shri Mehul S. Shah, learned advocate appearing on behalf of the petitioner has submitted that initially the petitioner did not challenge the said order, however, as the father of the petitioner has purchased one another land in the year 2003 and the benefit of the aforesaid Government Resolution was given to him, the petitioner has challenged the aforesaid order of the year 1995 by way of the present Special Civil Application. He has also further submitted that even the Government has taken 10 years in issuing the notice for the recovery of the deficit stamp duty by way of issuing recovery notice dated 25.2.2005 and therefore, it is requested by Shri Shah, learned advocate appearing on behalf of the petitioner to direct the respondents to give post decisional hearing with regard to the applicability of the aforesaid Government Resolution dated 30.9.1991.

3. Shri Prachchhak, learned AGP while opposing the present Special Civil Application though he has not filed

affidavit-in-reply, has submitted that there is no explanation whatsoever by the petitioner explaining the delay of 10 years in preferring the present Special Civil Application challenging the order of the year 1995. He has submitted that assuming that the contention on behalf of the petitioner that the benefit of Government Resolution of 1991 is given in the year 2003 in favour of his father, in that case also, it can be said that the petitioner has accepted the order of the year 1995 which is now impugned in the present Special Civil Application and merely because some further orders are passed after many years giving the benefit that does not give any right in favour of the petitioner to challenge the order of the year 1995 after a period of 10 years. He has also further submitted that the petitioner being a government servant was even otherwise not entitled to the benefit of the Government Resolution dated 30.9.1991 as the petitioner cannot be said to be a small farmer as defined under Section 2(g) of the Gujarat Rural Debtors Relief Act; 1976 and therefore, it is requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the

parties.

5. It is not in dispute that order impugned in the present Special Civil Application is the order passed by the Deputy Collector, Stamp Duty Valuation, Junagadh dated 20.7.1995 and the same has been challenged by the petitioner by way of the present Special Civil Application after a period of 10 years. As such there is no explanation given by the petitioner in the petition explaining the delay except the fact that the benefit of the Government Resolution dated 30.9.1991 was given to his father in the year 2003 and therefore, the petitioner has challenged the impugned order of the year 1995. Another contention on behalf of the petitioner is that when the State Government has taken 10 years in issuing the notice for recovery of the deficit stamp duty on the basis of the order passed in the year 1995, the petitioner can challenge the impugned order after a period of 10 years. Merely because the State Government and the appropriate authority has issued notice for recovery after the period of 10 years, it does not give any right in favour of the petitioner to challenge the order which is passed in the year 1995 after the period of 10

years. It is also required to be noted that the petitioner has never challenged the order of the year 1995 and only as per the fact that the benefit of Government Resolution dated 30.9.1991 was given to the father of the petitioner in the year 2003, the petitioner has challenged the order of the year 1995, meaning thereby, the petitioner has accepted the order of the year 1995 at least till the year 2003. It is also required to be noted that even if the contention on behalf of the petitioner that as the benefit of Government Resolution dated 30.9.1991 was given to the father of the petitioner in the year 2003 considering him to be small farmer even also it is required to be noted that the present Special Civil Application has been filed in the year 2005 so even there is a delay of 2 years even after granting of the benefit of the Government Resolution of the year 1991 in favour of his father. Once the petitioner has accepted the order of 1995 and did not challenge the said order and merely because the benefit of Government Resolution has given subsequently to other persons, may be the father of the petitioner, that does not give any right to the petitioner to challenge the order after the period of 10 years which came to be accepted by him earlier.

Under the circumstances, the present Special Civil Application is required to be dismissed on the ground of delay and laches and also on the ground that the petitioner has already accepted the aforesaid order of the year 1995 by not challenging the same.

6. For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed. Rule is discharged.

(M.R.SHAH, J.)

kdc.